

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

JAMES SURRETT and ROSE SURRETT,

Plaintiffs,

v.

CIVIL ACTION NO. 5:15-cv-15444

PINNACLE MINING COMPANY, LLC,

Defendant.

PLAINTIFFS' MOTION FOR EMERGENCY INJUNCTIVE RELIEF

Now come the Plaintiffs, James Surratt and Rose Surratt and other plaintiffs on Woosley Road, by counsel Roger A. Decanio of The Masters Law Firm lc, and move this Honorable Court to grant Emergency Injunctive Relief pursuant to Rule 65 of the *Federal Rules of Civil Procedure* against Pinnacle Mining Company stemming from an explosion in one of his homes due to a buildup of methane gas from mining operations underground.

ISSUE

Plaintiffs respectfully request an immediate Order requiring Pinnacle to perform the following tasks:

- 1. Send a team of professional engineers to monitor for any methane gas in the homes along Woosley Road, particularly the Surratt home at issue, which exploded on November 15, 2015 due to methane gas leak from Pinnacle's coal mine below.**
- 2. Cap all wells along the Woosley Road area with cement to prohibit methane gas from escaping, particularly the Surratt home.**
- 3. Report all methane detection results from the Woosley Road area and their mines underneath to the residents in the area,**

Counsel for all parties, this Court and to the West Virginia Department of Environmental Protection.

4. Due to continued detection of methane gas from the Surratt home since the explosion, mining operations beneath Woosley Road should be suspended, including but not limited to long wall mining, which is scheduled to begin approximately three (3) weeks from now.
5. Relocate the residents of Woosley Road immediately to a safe location and eventually set forth the permanent relocation of the residents and Pinnacle purchasing their properties on Woosley Road.
6. Order Pinnacle to stop harassing James Surratt.

FACTS

The Surratt's and other neighbors along Woosley Road filed suit against Defendant, Pinnacle Mining Company, LLC, in Wyoming County Circuit Court for property damages due to subsidence caused by Pinnacle's underground mining operations. See the attached Complaint identified as **Exhibit A**.

James Surratt is employed by Pinnacle Mining Company as an underground coal miner. An underground mine is located under both residences he owns located at 160 and 172 Woosley Road, Pineville, Wyoming County, West Virginia. See attached underground mine map identified as **Exhibit B**.

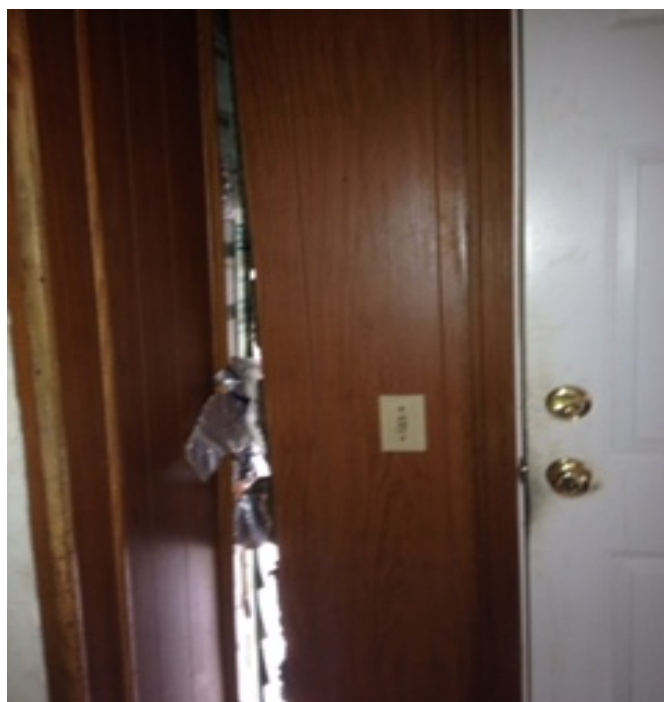
On Sunday, November 15, 2015 there was an explosion inside the home located at 160 Woosley Road. James Surratt had family staying in the home at the time. This home relied on well water, which has been known to be conduit for methane gas from mining activity. After

turning on the washing machine to do laundry Sunday afternoon, methane gas exploded causing serious damages to the interior and exterior of the home. Thankfully no one was harmed in the explosion. The house is not serviced by natural gas. There were flames that rose from the ground above the location of the well and pump that was put out by the Surratts and local residents.

The Welch/Pineville Fire Department was called and responded to the home after the explosion. According to their incident report, they observed no fire or smoke at the time. The house showed it had “an explosion.” According to the fire department, “0.25% methane gas was detected coming from under the house and 0.30% was detected coming from underground where the pump and well was located.” The report indicates “heavy damage inside and outside the home.” See **Exhibit C**. Below are several photographs taken shortly after the explosion showing the extent of the damages.









Dr. Scott Simonton, an environmental engineer and Professor of environmental sciences for Marshall University, inspected the home the day after the explosion, on Monday, November 16, 2015. Dr. Simonton concluded the methane gas detected by the fire department came from the Pinnacle's mine operation below and caused the explosion. See attached Affidavit and CV of Dr. Simonton identified as **Exhibits D & E**.

As a result of Dr. Simonton's findings, the house needs to be vacated and inspected. Dr. Simonton indicates that the well needs to be taken out of service and sealed to prevent further migration of explosive gas into what remains of the house and monitoring should be conducted.

There are various families that live in the immediate vicinity of the home in question and although many have their domestic water supplied by a public utility, a sizeable number still have active wells. Some of them use their well water for washing their vehicles and/or gardening. These wells should also be sealed and monitored. Dr. Simonton further states Pinnacle should conduct a thorough investigation of methane migration from their operations.

Since the explosion there have been several developments. Pinnacle recently started monitoring for methane in the house that exploded and in homes in the surrounding area. The

house that exploded continues to have methane gas leakage. A reading of 0.30% methane gas was detected on November 19, 2015 and 0.20% on November 20, 2015. **Consequently, the dangers of future explosions continue to exist.**

Plaintiffs previously requested Pinnacle seal all wells on Woolsey Road and monitor for methane gas in the Circuit Court of Wyoming County. That request was made prior to knowing the long wall mine would be underneath the area in approximately **three (3) weeks**. Initial mining has been conducted below the home and area in question. It is believed that the current conditions could be exacerbated when long wall operations commence underneath Woolsey Road. Plaintiffs have all suffered subsidence damages to their homes and are further concerned that explosive methane gas will escape along subsidence cracked areas once Pinnacle starts its long wall operation beneath them in **three (3) weeks**.

There is a presumption of causation to any damage to structures as a result of earth movement within a 30 ° angle of draw from any underground coal extraction. W. Va. Code R. 38-2-3. The Surratts and the residences of Woolsey Road are well within the 30 ° angle of draw from Pinnacle's underground mining. They are directly above the mine. See **Exhibit B**.

ARGUMENT

Rule 65 provides that the Court may issue orders that are mandatory, compelling affirmative action if there is a necessity and urgent. *McCausland v. Jarrell*, 136 W.Va. 569 (1951); *State v. Baker*, 112 W.Va. 263 (1932); *Kennedy v. Klammer*, 104 W.Va. 198 (1927).

Grounds for entering injunctive relief include (1) whether the movant faces immediate and irreparable injury; (2) whether there is an adequate legal remedy; (3) the likelihood of movant's success on the merits; (4) whether the balance of equities favor the movant; and (5) the impact on the public interest. See *United States v. Jenkins*, 974 F.2d 32 (5th Cir. 1992); *Berman v. Lamar*, 874 F. Supp. 102 (E.D. Pa. 1995); *Heather K v. Mallard*, 887 F.Supp. 1249 N.D. Iowa

(1995); *Kansas Hospital Ass'n v. Whiteman*, 835 F. Supp. 1548 (D. Kan. 1993); *Our Co. v. Eagle Snacks, Inc.*, 812 F. Supp. 6 (D.Me. 1993); *National Football League Players' Ass'n v. Pro-Football, Inc.*, 849 F. Supp. 1 (D.D.C. 1993).

The residents of Woosley Road and especially the Surratt family will be irreparably harmed if there is no immediate action. Methane gas could be building up again over Pinnacle's mine and there could be another explosion. Even if the house on 160 Woosley Road were to be repaired, any use of its well, or any well in that area could be collecting explosive gases. The harm of another explosion would constitute an irreparable injury. Another explosion could cause physical harm to people in that small community.

There is a likelihood of success on the merits of the case because the presence of methane was detected by first responders. **See Exhibit C.** Wells are known conduits of methane gas from mining operations as stated in Dr. Simonton's affidavit See attached Affidavit and CV of Dr. Simonton identified as **Exhibits D & E.** This Court should take note that there is a presumption of causation which applies to any damage to structures like the Surratt home as a result of earth movement within a 30° angle of draw from any underground coal extraction. W. Va. Code R. 38-2-3. The Surratt home is directly above active mining operations of Pinnacle's mines. **See Exhibit B.** Pinnacle is obligated to "remedy any material damage" as a result of the methane gas explosion and surface damage from Pinnacle's underground mine subsidence. W. Va. Code R. 38-2-3. (3.12.a.6.). This explosion occurred despite the venting of methane gas by Pinnacle in the surrounding area. Morris Blankenship, a resident of Woosley Road and Plaintiff against Pinnacle recently had his well collapse about a month prior to the explosion. His pump was lost in the collapsed well. Many residents report major structural damages to their homes and property since Pinnacle began mining. All of the residents of

Woosley Road are directly above Pinnacle's mines. There is clear evidence of ground moving and subsidence due to mining operations. Any crack in the strata due to the mining below can be a conduit for further escaping explosive methane gas. For these reasons and others, Mr. Surratt, and his neighbors on Woosley Road are likely to succeed in the merits of this case and should be relocated.

Even after the explosion, detection of methane gas persists. The balance of equities favors not only the Surratt family but the neighbors along Woosley Road. This is a small geographic area and people who live there are but yards away from the home that exploded. Public safety and health should always be a paramount concern in any situation as part of the public interest. Consequently the balance of equities favors a suspension of mining below Woosley Road, and a prohibition of long wall mining underneath the area to prevent further escape of explosive gases. The residents of Woosley Road have seen damages to their property, homes and wells as a result of subsidence and the added danger of methane gas seeping up from the ground calls for their safety to be considered. It is reasonable to request this Court that they be relocated at Pinnacle's expense to a safe location. Supporting testimony will be provided by experts in support thereof.

Finally, James Surratt, the owner of the residence that exploded is an employee of Defendant, Pinnacle Mine. He has been harassed by his employer and even blamed for causing methane to leak into his home from the mines. It is respectfully requested that the Honorable Court to Order Pinnacle to refrain from any further harassing behavior and terminating James Surratt's employment in retaliation to this matter.

WHEREFORE, James Surratt and Rose Surratt and all the Plaintiffs listed on **Exhibit A** respectfully request this Court to Order immediate injunctive relief for the following:

- 1. Send a team of professional engineers to monitor for any methane gas in the homes along Woosley Road, particularly the Surratt home at issue, which exploded on November 15, 2015 due to methane gas leak from Pinnacle's coal mine below.**
- 2. Cap all wells along the Woosley Road area with cement to prohibit methane gas from escaping, particularly the Surratt home.**
- 3. Report all methane detection results from the Woosley Road area and their mines underneath to the residents in the area, counsel for all parties, this Court and to the West Virginia Department of Environmental Protection.**
- 4. Due to continued detection of methane gas detection from the Surratt home since the explosion, mining operations beneath Woosley Rd should be suspended, including but not limited to the long wall mining, which is scheduled to begin approximately three (3) weeks from now.**
- 5. Relocate the residents of Woosley Road immediately to a safe location and eventually set forth the permanent relocation of the residents and Pinnacle purchasing their properties on Woosley Road.**
- 6. Order Pinnacle Mines to stop harassing James Surratt.**

and for such other further and general relief as the Court deems just and proper.

**JAMES SURRETT and
ROSE SURRETT,**

By Counsel

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